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13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

17 LUIS LOPEZ,  
18 Plaintiff,  
19 v.  
20 NORTHWEST CASCADE, INC. and DOES  
1 to 10,  
21 Defendants.  
22

Case No. 4:21-cv-06150-KAW

**INITIAL JOINT CASE MANAGEMENT  
STATEMENT**

Judge: Hon. Kandis A. Westmore

Complaint Filed: August 10, 2021

Trial Date: TBD

23 In accordance with Federal Rule of Civil Procedure 26(f), Local Rule 16-9, and the  
24 Standing Order for All Judges of the Northern District of California – Contents of Joint Case  
25 Management Statement, counsel for Plaintiff and Defendant submit this Initial Joint Case  
26 Management Statement. The Parties conferred and submit the following report of their meeting  
27 for the court's approval:

28 //

1 **I. JURISDICTION AND SERVICE**

2 This Court has subject-matter jurisdiction over Plaintiff's claims under 28 U.S.C. §§ 1331.  
3 No issues exist regarding personal jurisdiction or venue. No parties remain to be served.

4 **II. FACTS AND LEGAL ISSUES**

5 **A. Factual Issues**

6 **1. Plaintiff's Position**

7 **a. Plaintiff is owed wages.**

8 On June 11, 2015, Plaintiff was hired by Defendant as a commercial driver at its "Honey  
9 Bucket" yard in Richmond, California. Plaintiff was not exempt from the hourly overtime  
10 requirements under federal and state laws. His duties included cleaning, repairing, pick-up and  
11 delivery of portable toilets and hand washer stations.

12 Since Plaintiff started his employment with Defendant, he was instructed to work, and did  
13 work, 14-16 hours per day. Defendant was aware that Plaintiff worked in excess of his 8 hour  
14 shift, but, did not pay him full overtime. He was required to work 6 days per week, as well as on  
15 week-ends.

16 Plaintiff noticed these wage discrepancies on his paychecks when Defendant began using  
17 new payroll software. He reported these discrepancies to his supervisors who told him they would  
18 "make it up" on the next paycheck. Defendant did not make full and complete payment and  
19 Plaintiff continued to complain about his deficient wages to no avail.

20 **b. Defendant's discrimination of Plaintiff.**

21 Plaintiff was never offered a promotion throughout his employment with Defendant.  
22 Further, his supervisors have antagonized and belittled him because of his race and nationality.  
23 They made disparaging remarks about his accent and told him he did not receive a promotion  
24 because he "spoke horrible English." This remark is false as Plaintiff speaks English fluently.  
25 Plaintiff has applied for multiple promotions without success and witnessed less experienced  
26 Caucasian employees receive these opportunities. Defendant also treated Plaintiff and other non-  
27 Caucasian workers differently by assigning them longer hours and heavier workloads than  
28 Caucasian employees. Further, when Plaintiff returned from a protected medical leave in 2019,

1 his supervisors threatened him with a heavier workload because they were upset that he took a  
2 protected leave of absence.

3 c. **Plaintiff complained of unsafe work conditions.**

4 Defendant had a business practice of cleaning its portable toilets on a designated 20'x 20'  
5 concrete slab in the Richmond yard. Defendant sprayed the toilets with soap, bleach and  
6 chemicals to separate the fecal matter. The slab was not level and contained only one drain such  
7 that contaminated water from the toilets collected in stagnant pools. Plaintiff complained to  
8 Defendant that workers were exposed to fecal matter and other environmental hazards when they  
9 stood in 4 inches of contaminated water and attempted to clean the toilets before preparing them  
10 for deliveries. His supervisors merely laughed and responded, "You're getting wet . . . wear 2-3  
11 pairs of socks!" Plaintiff explained Defendant's unsanitary and hazardous methods in the cleaning  
12 station was disallowed by the Occupational Health & Safety Administration (OSHA). He also  
13 requested protective gear such as rain coats, waterproof boots, and gloves for the employees. His  
14 supervisors replied, "No, we don't provide that. We've been doing it this way for a couple of  
15 years." Plaintiff made multiple complaints about Defendant's unsafe working conditions over the  
16 last year of his employment.

17 d. **Plaintiff suffered an injury on the work site.**

18 On December 15, 2020, Plaintiff injured himself on the job. He was replacing a foot pump  
19 on a hand washing station at a construction site in San Francisco when he slipped on excess water  
20 and fell directly upon his left knee. Plaintiff was unable to walk for several days or place full  
21 weight upon his left leg. He reported his injury to his supervisor that same day. His supervisor  
22 completed an accident report and told him to stay home. A few days later, Plaintiff informed his  
23 supervisor that he would need additional time to recover.

24 e. **Plaintiff's termination.**

25 Instead, on or about December 22, 2020, Defendants terminated Plaintiff and told him that  
26 he had "abandoned" his job.

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**2. Defendant's Position**

Defendant denies all allegations made by Plaintiff, and denies that Plaintiff is entitled to the recovery any damages whatsoever.

**B. Legal Issues**

**1. Plaintiff's Position**

- a. Whether Defendant fully compensated Plaintiff for his overtime hours under the FLSA.
- b. Whether Defendant fully compensated Plaintiff for meal and rest breaks.
- c. Whether Plaintiff is entitled to waiting time penalties pursuant to Labor Code sections 201-203.
- d. Whether Defendant provided adequate itemized wage statements.
- e. Whether Defendant retaliated against Plaintiff for complaining of unpaid wages.
- f. Whether Defendant retaliated against Plaintiff for complaining of unsafe and hazardous working conditions in the Richmond yard.
- g. Whether Defendant discriminated against Plaintiff based upon race.
- h. Whether Defendant discriminated against Plaintiff based upon disability.
- i. Whether Defendant caused Plaintiff harm and damages.
- j. The nature and extent of Plaintiff's harm and damages.

**2. Defendant's Position**

Defendant agrees that the stated issues are alleged in Plaintiff's Complaint, but denies any liability under any issue. Defendant further incorporates by reference the denials and affirmative defenses set forth in "DEFENDANT NORTHWEST CASCADE, INC.'S ANSWER TO COMPLAINT" on file with this Court.

**III. MOTIONS**

There are no motions pending. The Parties anticipate the filing of motions for summary judgment at the appropriate time.

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1 **IV. AMENDMENT OF PLEADINGS**

2 Plaintiff does not anticipate any amendment of the pleadings at this time.

3 **V. EVIDENCE PRESERVATION**

4 The Parties are aware of the obligations to preserve evidence and have taken all  
5 appropriate steps to do so.

6 **VI. DISCOVERY**

7 The Parties are following the Northern District of California's General Order No. 71  
8 governing discovery protocols in employment cases, and initial disclosures were exchanged by the  
9 parties on October 12, 2021.

10 There is no need to modify the default discovery limits set forth in the Federal Rules of  
11 Civil Procedure.

12 **VII. CLASS ACTION**

13 This is not a class action.

14 **VIII. RELATED CASES**

15 There are no cases that have been deemed as related to this action.

16 **IX. RELIEF**

17 **1. Plaintiff's Position**

18 Economic Damages: Plaintiff's investigation is continuing as to the number of unpaid  
19 hours and amount of overtime wages that he is owed. Plaintiff will seek all available statutory and  
20 equitable remedies, including but not limited to twice back pay pursuant to the Fair Labor  
21 Standards Act, 29 U.S.C. Section 215. Plaintiff is also seeking damages to the amounts owed for  
22 missed meal and rest breaks, future wage loss, lost benefits, bonus owed, as well as additional  
23 statutory penalties.

24 Non-Economic Damages: Plaintiff seeks general damages for emotional injuries  
25 manifesting in physical illness, significant reputation and professional injury, embarrassment and  
26 anguish, and emotional distress. Plaintiff experienced anxiety, depression, sleeplessness,  
27 headaches, increased weight, fatigue, stress, and loss of enjoyment of life as a result of  
28 Defendant's violation of his employment rights.

Attorneys' Fees and Costs: This amount will be decided by the trier of fact after all evidence is provided. The amounts continue to accrue.

Plaintiff reserves the right to supplement this response as Plaintiff has not completed his trial preparation and discovery has just commenced.

**2. Defendant's Position**

Defendant denies that Plaintiff is entitled to recover any damages whatsoever.

**X. SETTLEMENT AND ADR**

The parties are amenable to private mediation or the court's ADR program.

**XI. WHETHER ALL PARTIES CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

The Parties have consented to the assignment of Magistrate Judge Kandis A. Westmore, for all purposes.

**XII. OTHER REFERENCE**

The Parties agree that no references to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation would be either necessary or suitable in this action at this time.

**XIII. NARROWING OF ISSUES**

The Parties submit that it is premature to discuss any further narrowing, or how to expedite presentation of any issues at trial.

**XIV. EXPEDITED SCHEDULE**

The Parties agree that this case is not suitable for handling on an expedited basis with streamlined procedures.

**SCHEDULE**

**1. Plaintiff's Position**

Plaintiff proposes the following schedule:

Initial case management conference	November 9, 2021
Fact discovery cut-off	June 6, 2022
Last day for dispositive motion hearing	June 13, 2022
Affirmative expert designations	June 27, 2022

Rebuttal expert designations	July 8, 2022
Expert discovery cut off	August 5, 2022
Pre-trial conference	October 17, 2022
Trial	November 7, 2022

## 2. Defendant's Position

Defendant proposes the following schedule:

Initial case management conference	November 9, 2021
Fact discovery cut-off	September 30, 2022
Affirmative expert designations	October 21, 2022
Rebuttal expert designations	November 4, 2022
Last day for dispositive motion hearing	December 1, 2022
Expert discovery cut off	December 8, 2022
Settlement Conference	January 11, 2023
Pre-trial conference	February 8, 2023
Trial	March 6, 2023

Counsel for Defendant would not be able schedule trial until the Spring months of 2023 due to family obligations in August and November 2022 and trials currently scheduled on the following dates:

<u>Date</u>	<u>Est. Duration</u>	<u>Case Name &amp; Court</u>
January 25, 2022	Approx. 3-week trial.	<i>Jessica Hoglund v. Sierra Nevada Memorial-Miners Hospital</i> , Nevada County Superior Court, Case No. CU18-083045
February 14, 2022	Approx. 3-week trial.	<i>Dawnlea Bucey v. Dignity Health</i> , San Francisco County Superior Court, Case No. CGC-20-585748
March 8, 2022	Approx. 3-week trial.	<i>Stacy Zolldan v. Sierra Nevada Memorial-Miners Hospital</i> , Nevada County Superior Court, Case No. CU18-083374-B
April 8, 2022	Approx. 2-week trial.	<i>Irma Toscano v. Broadway Villa Post Acute</i> , Sonoma County Superior Court, Case No. SCV-265739
May 3, 2022	Approx. 3-week trial.	<i>Monique Rodriguez v. Sutter Health</i> , Stanislaus County Superior Court, Case No. CV-20-003747

<u>Date</u>	<u>Est. Duration</u>	<u>Case Name &amp; Court</u>
May 11, 2022	Approx. 2-day trial.	<i>Luxor Distro, Inc. v. General Logistics Systems US, Inc.</i> , Orange County Superior Court, Case No. 30-2020-01152665-CL-BC-CJC
June 27, 2022	Approx. 3-week trial.	<i>Barbara Young v. Sutter Health</i> , Sacramento County Superior Court, Case No. 34-2019-000257968
July 25, 2022	Approx. 3-week trial.	<i>Courtney Wilson v. Sutter Valley Hospitals</i> , Placer County Superior Court Case No. S-CV-0046839
September 26, 2022	Approx. 3-week trial.	<i>Darlene Bartolomei v. Sutter Health</i> , Sacramento County Superior Court, Case No. 34-2019-000260282
October 3, 2022	Approx. 2-week trial.	<i>Bruce Andrews v. Command Delivery Systems, Inc.</i> , Alameda County Superior Court, Case No. RG21093512
October 31, 2022	Approx. 3-week trial.	<i>Rebecca Sands v. Dignity Health</i> , San Joaquin County Superior Court, Case No. STK-CV-UWT-2019-6970
January 9, 2023	Approx. 3-week trial.	<i>Deanna DiMaggio v. Dignity Health</i> , Sacramento County Superior Court, Case No. 34-2019-00248987

#### **XV. TRIAL**

Plaintiff has requested a jury trial and anticipates a trial of 5-7 court days.

Defendant requests that this matter be tried to the Court but agrees that 5-7 court days is a reasonable estimate of the length of trial.

#### **XVI. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

Defendant has filed a Certification of Interested Entities or Persons as required by Civil Local Rule 3-15. Plaintiff will promptly do so.

#### **XVII. PROFESSIONAL CONDUCT:**

The attorneys of record for each Party certify that each has reviewed the Guidelines for Professional Conduct for the Northern District of California.

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**XVIII. OTHER MATTERS AS MAY FACILITATE THE JUST, SPEEDY AND  
INEXPENSIVE DISPOSITION OF THIS MATTER**

The Parties are not aware of any such matters at this time.

Dated: November 1, 2021

BROWN POORE LLP

*/s/ Scott A. Brown*  
(Authorized via email on 11/1/21)

By: \_\_\_\_\_

Scott A. Brown  
Attorneys for Plaintiff LUIS LOPEZ

Dated: November 1, 2021

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

*/s/ Glen A. Williams*

By: \_\_\_\_\_

Rex Darrell Berry  
Glen A. Williams  
Attorneys for Defendant NORTHWEST  
CASCADE, INC.

**ATTORNEY'S SIGNATURE ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that I have on file documentation of the concurrence in the filing of this document from the other Signatory to this e-filed document, attorney Scott A. Brown, who is a registered CM/ECF user and provided me written authorization via email of his consent to affixing his e-signature hereto.

Dated: November 1, 2021

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

*/s/ Glen A. Williams*

By:

Glen A. Williams  
Attorneys for Defendant NORTHWEST  
CASCADE, INC.

**CERTIFICATE OF SERVICE**

Case Name: Luis Lopez v. Northwest Cascade, Inc.

No.: 3:21-cv-06150-KAW

On November 1, 2021, I filed the following document(s) described as INITIAL JOINT CASE MANAGEMENT STATEMENT electronically through the CM/ECF system. All parties on the Notice of Electronic Filing to receive electronic notice have been served through the CM/ECF system.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 1, 2021, at Sacramento, California.

/s/ Katherine L. Rockenstein  
Katherine L. Rockenstein